IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: November 1, 2011

(1) Crl. Appeal No. 111 SB of 2000

Rajvinder Singh ...Appellant

Versus

State of Haryana ...Respondent

(2) Crl. Revision No. 212 of 2000

Bhagwant Singh ...Petitioner

Versus

Rajwinder Singh and another ...Respondents

CORAM:- HON'BLE MR. JUSTICE GURDEV SINGH

Present: Mr. Sudhir Sharma, Advocate, for
for the appellant.

Mr. Sidharath Swaroop, DAG, Haryana.

Mr. Arvind Thakur, Advocate,
for the complainant.

GURDEV SINGH, J. (Oral)

Vide this order, I propose to decide the appeal preferred by Rajvinder Singh, appellant/accused, against his conviction and sentence under Section 307 IPC and the revision filed by Bhagwant Singh, petitioner/complainant, for enhancing the sentence imposed upon the accused. He was sentenced to undergo rigorous imprisonment for a period of 5 years and to pay a fine of Rs. 1,000/- and in default thereof to further undergo simple imprisonment for a period of 20 days, against maximum

prescribed sentence of imprisonment of life, vide judgment and order dated 25.1.2000 passed by the Additional Sessions Judge, Sirsa.

The facts, in brief, are that about three years before the present occurrence, the accused had abused Angrej Kaur, sister of Bhagwant Singh injured/complainant (PW-2), for which the accused had asked for pardon from their family members. On that account, he was nursing a grudge against the complainant party. On 7.2.1999, the father and the brother of the complainant, had gone to Malout for purchasing a tractor and he, along with his agricultural servant, Gurdeep Singh (PW-3) was working in the field. At about 12.30 p.m. his mother Gurdial Kaur came there with their meals and after they had taken the same, she started back and had hardly covered a distance of about 15-20 paces, when the accused taking benefit of the absence of his father and brother came to that place, while armed with a licenced double barrel gun. After raising abuses, he immediately fired shot from that gun, the pellets of which hit him on different parts of his body. Those pellets also hit Gurdeep Singh. At that time his paternal uncle Banta Singh was working in the adjoining field, who raised a lalkara and the accused fired two other shots towards them while they were running away, but the pellets thereof did not hit any one of them. Gurdial Kaur saved herself by lying on the ground. The injured were being removed to the hospital in the jeep, when Surinder Singh, Inspector/SHO (PW-7) met them near Bhatinda chowk. At that place, the complainant made his statement Ex. PG about this occurrence before the Inspector, who after making his endorsement Ex. PG/1 upon the same, sent that to the police station and on the basis thereof formal FIR Ex. PG/2 was recorded against the accused for the offences under Section 307 IPC and Section 27 of the Arms Act, 1959.

The complainant and Gurdeep Singh were admitted in General Hospital, Sirsa, where they were medically examined by Dr. G.S. Somany (PW-1), who found 9 fire arm injuries on the person of the complainant and two injuries on the person of Gurdeep Singh, which were detailed in the ML reports Ex. PA/1 and Ex. PB respectively. The Inspector went to the place of occurrence and after inspecting the same prepared rough site plan Ex. PK with correct marginal notes. He called Ajmer Singh, Photographer (PW-5) to the spot, who took photographs Exs. P.4 and P.5. Two spent cartridges Exs. P8 and P9 were recovered from the spot, which were converted into a parcel and the same was sealed by the Inspector with his seal 'SS' and was taken into possession vide a recovery memo. The wearing apparels found on the person of the complainant were taken into possession by the doctor and were converted into a sealed parcel, which was handed over to the police. On 7.2.1999, the Inspector filed an application Ex. PC before the doctor, who declared the injuries on the person of the injured as simple. On 9.2.1999, the accused was arrested in front of his house. From his possession double barrel gun Ex. P.10, licence Ex. P.15 and four live cartridges Exs. P.11 to P.14 were recovered. The gun and the cartridges were converted into separate parcels and were sealed by the Inspector with his seal 'SS'. Those sealed parcels and the licence were taken into possession, vide memo Ex. PO. The map on scale Ex. PJ was got prepared from Baljinder Singh, Revenue Patwari (PW-6). The sealed parcels containing gun and empty cartridges were sent to FSL and were delivered at that place with seal intact. After examination, it was reported by the Deputy Director of that Laboratory, vide his report Ex. PU, that the gun's fire mechanism was in working order and that empty cartridges were fired from

the left and right barrel of that gun. Record regarding irrigation of the land of the complainant from the canal was taken into possession during the investigation and after completion thereof, challan was put in before the SDJM, who committed the same to the Court of Session, as the offence under Section 307 IPC as exclusively triable by that Court.

On appearance of the accused, in the court, copies of all the documents sent alongwith the police report and relied upon by the prosecution were supplied to him, as per the mandatory requirements of Section 207 Cr.P.C.. From the perusal of those documents and after hearing PP for the State and the accused in person, the learned Sessions Judge found sufficient grounds for presuming that the accused committed offence punishable under Section 307 IPC. He was charged accordingly, to which he pleaded not guilty and claimed trial.

To bring home the guilt of the accused, the prosecution examined Dr. G.S. Somany (PW-1), Bhagwant Singh, complainant (PW-2), Gurdeep Singh, injured (PW-3), Balwant Singh, Nehri Patwari (PW-4), Ajmer Singh, Photographer (PW-5), Baljinder Singh, Revenue Patwari (PW-6), Surender Singh, Inspector (PW-7), Subhash Chander, ASI (PW-8), Dharambir Singh, ASI (PW-9), Dharam Pal C. (PW-10), Ashok Kumar, C. (PW-11), Malkiat Singh (PW-12) and Dr. J.K. Bishnoi (PW-13).

After the close of the prosecution evidence, the accused was examined and his statement was recorded under Section 313 of the Cr.P.C. All the incriminating circumstances appearing against him in the prosecution evidence were put to him in order to enable him to explain the same. He denied all those circumstances and pleaded his innocence and false implication, on account of party faction in the village and suspicion.

He was called upon to enter on his defence and he tendered in his defence evidence copies of the Nehri Girdawari and report under Section 173 of Cr.P.C. Exs. DB and DC respectively.

After going through the evidence, so produced and hearing PP for the State and the learned defence counsel for the accused, the trial court convicted and sentenced the accused, as aforesaid.

I have heard learned counsel for the parties.

Learned counsel for the appellant/accused did not challenge the findings recorded by the learned trial court, upon which conviction has been based. However, he submitted that from the facts proved on the record by the prosecution, it cannot be said that the accused committed offence punishable under Section 307 IPC, as the injuries on the person of both the injured were found to be simple and, as per the prosecution version, the gun shots were fired from a distance of 14 karams. The firing of gun shots from such a distance makes it clear that it was never the intention of the accused to cause death of any of the injured and his only intention was to scare them. At the most, it can be said that the accused committed offence under Section 323 IPC. He has already undergone imprisonment for a period of about 10 months and that is a sufficient punishment for the offence under Section 323 IPC. He prayed that the conviction be converted from Section 307 IPC to Section 323 IPC and he be sentenced to imprisonment already undergone by him.

On the other hand, it has been submitted by the learned State counsel that the intention of the accused is very much apparent from his act. He was carrying a double barrel gun and the shot was fired from both the barrels and pellets thereof hit all over the person of Bhagwant Singh and on

the face of Gurdeep Singh. The second attempt was made by the accused when he fired two other shots, while the injured were running away from the spot. Merely because the injuries were found to be simple in nature, it cannot be held that no offence under Section 307 IPC is proved against the accused.

It has been submitted by the learned counsel for the complainant that the maximum sentence prescribed for the offence under Section 307 IPC, where the injury has also resulted is imprisonment, for life and the sentence of imprisonment of 5 years so imposed upon the accused is on the lower side. He prayed for enhancement of that sentence.

The following facts stand proved from the evidence produced by the prosecution and which have not been challenged at the time of the arguments:-

1. The accused, while armed with a double barrel gun, came to the fields of the complainant, where he was working with his servant Gurdeep Singh.
2. After hurling abuses, the accused fired from both the barrels of the gun and the pellets thereof hit the complainant all over his body and face of his servant Gurdeep Singh.
3. Gurdial Kaur, who was also present at the spot, saved herself by lying on the ground.
4. When both the injured started running from the spot, the accused fired two shots from his gun by aiming the same at them but the pellets did not hit them.

From these facts, the intention of the accused can easily be

inferred. His intention was to kill the complainant as he fired from the gun by aiming the same at him and the pellets which scattered, hit him all over his body. Only on the ground, that the shot was fired from the distance of 14 karams, it cannot be inferred that the accused never intended to kill the complainant and his intention was only to scare him. If his intention was only to scare him, then why he again fired at both the injured, while they were running away from the spot.

Learned counsel for the appellant has tried to place reliance on the Division Bench judgment of this Court reported in 1991 (3) R.C.R. (Criminal) 422 (**State of Punjab versus Parveen Kumari and others)**, in support of the contentions raised by him. The facts of that case were altogether different. Only single shot was fired resulting in simple injury on the non-vital part of the victim and there was no evidence to establish with certainty that the accused had the intention to cause the death. The present is the case of firing of more than one shot. It is well settled that in order to find out whether the offence falls under Section 307 IPC or not, it is not the injury, which is inflicted by the act of the accused, which is deciding factor but it is the intention or the knowledge. It was held by Hon'ble the Supreme Court in **State of Madhya Pradesh Vs. Imrat** 2009 (1) Criminal Court Cases 107 (S.C.) that for conviction under Section 307 IPC, it is sufficient if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The accused cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt. In **Akloo Ahir Vs. State of Bihar** 2010 (2) Apex Court Judgments 749, a shot was fired but missed its target, even then conviction under Section 307 IPC was

maintained, keeping in view that the intention of the accused was to cause death of the victim.

It is very much clear from the facts proved by the prosecution that the accused intended to cause the death of the complainant and his act clearly falls within the four corners of Section 307 IPC. The trial court did not commit any illegality, while convicting the accused for that offence.

It cannot be said that the sentence so imposed upon the accused is on the higher side or the lower side. A balance view has been taken by the trial court, while imposing the sentence. I do not find any ground to enhance or reduce the same. There is no merit in the appeal or the revision and both are hereby dismissed.

This order be certified to the trial court for necessary compliance.

Records of the trial court be returned.

November 1, 2011 **(GURDEV SINGH)**
prem **JUDGE**